HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VII Rule 32 (2)(b)

Description of the case

W.P. No. 7588 (M/S) of 2001

Sh. Harman Singh S/o S. Mangal Singh

vs.

The Additional District Judge D. Dun.
& others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 22.03.2004.

Initial of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 7588 (M/S) of 2001
(Old No. 9302/1983)

Sh. Harnam Singh,
S/o S. Mangal Singh,
R/o 152 Lakhibagh, D.Dun ….Petitioner

Vs

1. The Additional District Judge D.Dun
2. The Prescribed authority D.Dun.
3. Devi Chand S/o Sri Mangal,
   R/o 152 Lakhi Bagh, D.Dun. ….Respondents

Counsel for the petitioner Shri. L.P. Naithani
Standing Counsel for the respondent

Dated:- 22-3-2004

Hon'ble Rajesh Tandon J.

Heard Shri L.P. Naithani Learned counsel for the petitioner and Standing Counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the orders of respondent No. 1 and 2 dated 11-4-1983 and 11-5-1982.

Brief facts giving rise to the present writ petition are that the petitioner is the owner and landlord of property No. 152 Lakhi Bagh Dehradun, in which the opposite party is a tenant in one room. Petitioner has filed the application under Section 21(1)(b) of the Act on the ground that the building in dispute is in a dilapidated condition.

According to the petitioner a plan was sanctioned by Municipal Board on 1st November 1976 for its reconstruction. The entire property including the said room was a Kaccha construction and was

made up of mud and at several places, the same has fallen down. The ballies have been eaten by white ants and the tin roof has rusted.

In order to establish that the room was in a dilapidated condition, the petitioner has filed his affidavit and the report of the architect. Respondent No. 2 has also filed his own affidavit and the report of the architect. On behalf of the respondent No.3 expert report of Pyare Lal paper no. 59 (क) and affidavit 60 (क) have been filed. It has been mentioned in the said report and affidavit that the property is not in a dilapidated condition.

The Prescribed Authority on the basis of the material evidence on the record has come to the conclusion that the building is not in a dilapidated condition so as to require demolition and new construction.

The Appellate court, while confirming his judgment has relied upon the report of Sri Pyare Lal and his affidavit as well.

Both the courts below have disbelieved the expert evidence of the petitioner with regard to the dilapidated nature of the building.

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Section 21 (1)(b) of U.P. Urban Buildings Act 1972 reads as under: -

"Proceedings for release of building under occupation of tenant, -(1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely-

(b) that the building is in a dilapidated condition and is required for purpose of demolition and new construction.

Rules 17(1)(a) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Rules, 1972 provides as under:-

"Application for release on the ground of demolition and new construction [Section 21(1) (b) and 34 (8)]- Before allowing an application for release of a building under section 21 (1) (b) on the ground that it is required for purposes of demolition and new construction, the prescribed authority shall satisfy itself-

(i) *that the building requires demolition.*

The word 'Require' has been defined in The **Law Lexicon Second Edition (Reprint) 2001** Dictionary as: -

(1) Require means to make necessary; to demand; to ask as of right.

The demand as necessary or essential on general principles or in order to comply with some regulation [S. 37,ill. (b).T.P.Act]

Webster's defines "require" to mean to demand; to ask as of right, and any authority;(2) to claim; to render necessary as a duty;(3) to ask as a favour; to request (4) to call to account for.

"To 'require' is to demand; to insist upon having; to claim as of right, to exact; to claim as indispensable".

In a contractual obligation whereby one party is to do or permit such things as the other may "require" The word means **"reasonably require"** (Braunstein V. Accidental Insurance, 31 LJQB 17=1B. & S. 782).

The word 'Require' has also been defined in **Webster's Third New International** Dictionary as: -

(1) To ask, request, or desire to do something.

(ii) (a) To ask for authoritatively or imperatively: claim by right and authority.

(b) to ask for as a favour

(iii) (a) To call for as suitable or appropriate in a particular case: need for some end or purpose.

(b) To demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation).

© To demand as a necessary help or aid: need as an essential.

The prescribed Authority vide order dt. 11-5-1982 has rejected the application. The Appellate Court has held that the building is not in a ruinous condition and as such the application U/s 21 (1) cannot be allowed.

The writ petition relates to the year 1983. The application was filed for release of the premises under Section 21(1)(b) of U.P. Act 13 of 1972 as back as in the year 1981.

More than 20 years have already passed, condition of the building must have been changed. However, liberty is given to the petitioner to move a fresh application if such an application is filed; the same shall be given due to priority.

Both the courts below having found that the building is not in a dilapidated condition, the findings being findings of fact, no interference can be made under Article 226 of the Constitution of India.

In view of the aforesaid facts and circumstances if the fresh application is filled the same shall be dealt with expeditiously.

Subject to the aforesaid observations the writ petition is dismissed. There will be no order as to costs.

Dated: 22-03-2004 **(Rajesh Tandon, J.)**

M.K